

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DZ BANK AG DEUTSCHE	§	
ZENTRAL-	§	
GENOSSENSCHAFTSBANK,	§	
FRANKFURT AM MAIN,	§	
NEW YORK BRANCH,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL CASE NO. H-10-1635
	§	
JANEL APOSTOL INSURANCE	§	
AGENCY CORPORATION and	§	
JANEL APOSTOL,	§	
Defendants.	§	

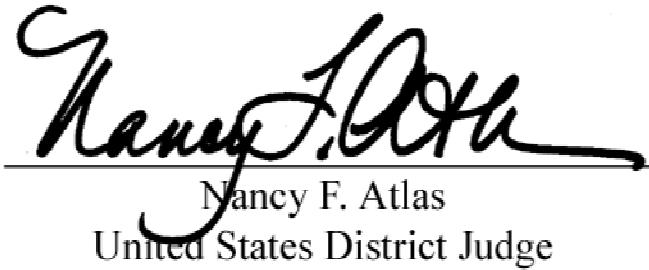
**MEMORANDUM AND ORDER**

This case is before the Court on the Motion to Dismiss Guaranty Against Janel Apostol Personally (“Motion to Dismiss”) [Doc. # 27] filed *pro se* by Defendant Janel Apostol. In the current Motion to Dismiss, as in a prior Motion to Dismiss, Defendant Apostol challenges the documents relied upon by Plaintiff DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt AM Main, New York Branch (“Bank”). As was true with the prior motion, this Motion to Dismiss was filed well after Defendant filed an Answer [Doc. # 6] on June 2, 2010, and is untimely. *See* FED. R. CIV. P. 12(b).

Additionally, as stated in the Memorandum and Order [Doc. # 18] denying the prior motion, the Bank has adequately *pled* its claims against Defendant. Bank has adequately alleged that it has full ownership of the Personal Guaranty executed by Defendant Apostol to guarantee payment of the underlying loan, which is currently in default. These allegations are sufficient to withstand a motion to dismiss. Apostol's challenge to the Bank's ownership of the Personal Guaranty may be raised, if appropriate, in a motion for summary judgment to be filed after the completion of discovery. Accordingly, it is hereby

**ORDERED** that Apostol's second Motion to Dismiss [Doc. # 27] is **DENIED**.

SIGNED at Houston, Texas, this 9<sup>th</sup> day of **February, 2011**.



Nancy F. Atlas  
Nancy F. Atlas  
United States District Judge